

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GC Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

COMMENTS OF TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

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I. Introduction and Summary

Texas Statewide Telephone Cooperative, Inc. (TSTCI) offers these comments in response to the *Further Inquiry* issued by the Federal Communications Commission (the “Commission”) on August 3, 2011.¹ TSTCI is an organization representing 39 small, rural incumbent local exchange companies and cooperatives in Texas, all operating under rate-of-return regulation. (See Attachment 1.) Although these companies and cooperatives serve less than three percent of Texas consumers, their service areas encompass over one-third of the state’s geographic area - approximately 90,000 square miles of mostly very rural, sparsely populated, and high-cost areas of Texas. It is throughout these areas that TSTCI members provide quality telecommunications and broadband access services to their customers. All members of TSTCI are small businesses and one of the largest employers within their community.

The *Further Inquiry* seeks comment on aspects of several proposals submitted in response to the Commission’s February 4, 2011 Notice of Proposed Rulemaking²: the America’s Broadband Connectivity Plan (“ABC Plan”) filed by six Price Cap Companies; the “RLEC Plan” proposed by Joint Rural Associations; and a proposal by the State Members of the Federal-State Universal Service Joint Board (the “State Members Plan”).

TSTCI’s comments focus on the following targeted issues: 1.) Commission preemption of state authority over intrastate access rates and carrier of last resort obligations as proposed in the ABC Plan; 2.) the violation of universal service principles inherent in the ABC Plan’s proposed broadband information transfer rates standards and alternative Advanced Mobility/Satellite Fund; 3.) the need to address reform of originating per-minute access rates

¹See, *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51; DA 11-1348, Released August 3, 2011 (the “*Further Inquiry*”).

² *Connect America Fund: A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers: High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; , WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011).

consistent with terminating per-minute access rates; 4.) new arbitrage opportunities created if VoIP traffic is not subject to existing intercarrier compensation (ICC) rates for both interstate and intrastate terminating VoIP traffic; and, 5.) the serious consequences reduced universal service support and intercarrier compensation (ICC) will have on customers and the communities served by the small rural carriers.

II. Preemption of State Authority is Not Appropriate and Can Cause Harm to the Telecommunications Industry

TSTCI contends that FCC preemption of state authority regarding intrastate access rates and carrier of last resort (“COLR”) obligations as laid out in the ABC Plan is neither necessary nor appropriate to achieve a balanced and effective reform plan.

The Telecommunications Act of 1996 reserves certain rights to the states regarding the regulation and interconnection of intrastate services.³ While the FCC does have the authority to preempt these rights under certain circumstances, traditionally, state regulatory rights have been recognized and preserved in order to allow the states to regulate the areas in which they are in a better position to have unique knowledge of local conditions, the needs of the carriers providing local service, and the ability to implement successful changes insuring the viability of the states’ communications infrastructure and local providers.

Preemption cannot be based on presumption⁴ and should not be undertaken without a clear and manifest purpose of Congress.⁵ Preemption of state laws is allowed when there is an outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible, where there is implicitly in federal law a barrier to state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the states to supplement federal law, or where the state law

³47 U.S.C. § 152(b).

⁴*Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981).

⁵*Jones v. Rath Packing Co.* 430 U.S. 519, 525 (1977).

stands as an obstacle to the accomplishment and execution of the full objectives of Congress.⁶

The circumstances proposed in this instance do not present any conflict between federal and state law.

The FCC and the states have long worked together to regulate the telecommunications industry. Great care has been taken to respect jurisdictional boundaries and provide balanced regulation to the dual inter/intra state nature of telecommunications services. While technology is changing how certain services are provided, advancing technologies also provide the continued ability to separate the interstate and intrastate services provided. Finally, there is not comprehensive federal regulation leaving no room for the states; rather, preemption of state regulation of intrastate rates and access charges could cause unnecessary harm to the telecommunications industry and threaten the principals of universal service.

The FCC and the states have been working jointly to exercise their dual jurisdiction over telecommunications for years. In the process, many states, including Texas, have implemented regulations and support mechanisms to address local concerns, ensure the availability of high quality affordable service to all residents, and fill in the gaps that federal regulations cannot address on a state by state basis. States such as Texas that have taken steps to institute state universal service mechanisms could be substantially harmed by federal preemption of setting rates, access charges, and any associated transitions or obligations in intrastate regulated services. Sudden changes in rates, both local and access charges, or service obligations could have an immediate negative impact on the state universal service support mechanisms, threaten the viability of many of the small and rural carriers throughout Texas, and put the telecommunications infrastructure of Texas in jeopardy.

The Texas Public Utility Commission and other state utility commissions are in a better position to implement an access reduction, determine the funding level necessary to offset any

⁶ *La. Public Serv. Com v. FCC*, 476 U.S. 355, 368-369 (1986).

reductions, and balance any reductions against the burdens imposed upon customers and the viability of the states local exchange companies. Costs of service, and the difficulty in providing service to all citizens, vary from state to state. Thus, varying regulations and levels of support are needed to provide high quality and affordable service in each state. Declaring all telecommunications services to be under interstate jurisdiction robs the states, whom are in the best position to know the needs and intricacies of telecommunications within their state, from the ability to make adjustments and provide the necessary guidance to maintain the viability of communications services and the providers of those services.

TSTCI maintains that the standards for preemption regarding intrastate services and access are not met as presumed in the ABC Plan. Exercising preemption to implement broad sweeping reform undermines the state universal support mechanisms and ignores the level of expertise the states have regarding the carriers and services provided within their state, and their ability to make adjustments to respond to local changes and needs.

III. ABC Plan Violates ‘Universal Service’ Requirements

The plan proposed as the ABC Plan violates the long-established federal statutory requirement for universal service.⁷

As its underlying core requirement, the federal universal service statutory provisions, first established by Congress in 1934⁸ and re-emphasized in the 1996 Act, require that the high-cost rural areas of the nation receive telecommunications service that is comparable in quality and price to similar telecommunications services which are available in urban areas.⁹

⁷ 47 U.S.C. 254.

⁸ Communications Act of 1934; 47 U.S.C 151 et. seq.

⁹ 47 U.S.C. 254(b)(3); “Access in rural and high cost areas- consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

The ABC Plan, while it suggests it is limited to price-cap carriers, nonetheless, sets a dangerous legally-challengeable precedent for rate-of-return carriers; and as well presents a more outright universal service violation to those high-cost rural areas proposed to be served under the ABC Plan.

Universal service statutory requirements are violated by two basic provisions of the ABC proposal: (1) the inadequacy of the proposed broadband capabilities for rural areas, and (2) the Advanced Mobility/Satellite Fund (AMF) proposal to allow use and funding for wholly inadequate and inferior broadband service in the highest-cost rural areas. If approved, the ABC proposal effectively reverses this nation's long-held universal service requirements.

1. Inadequate Broadband Capabilities:

The ABC Plan proposes a wholly inadequate standard for broadband service capability for the rural areas to be served by carriers covered under the Plan. The ABC Plan adopts a broadband standard of 4 Mbps downstream and 768 kbps upstream, which is a standard even lower than the 4 Mbps downstream/1 Mbps upstream in the current National Broadband Plan that was heavily criticized by many industry commenters, including the Congress. It is far inferior to the well-cited and publicized "100 megs to 100 million homes" goal set by the Administration.

By proposing inadequate, inferior service for the most rural areas, the ABC Plan would lower the broadband standard well below what many very rural rate-of-return carriers' customers already enjoy. Thus, the ABC proposal, instead of bringing rural service to reasonably comparable levels with urban customers, would completely reverse universal service concepts to force a lowering of the service level many rural customers already enjoy, in clear violation of the legal requirements of the universal service statutory provisions.

2. Proposed Advanced Mobility/Satellite Fund (AMF) Violates Universal Service Policy Objectives

The ABC Plan's second obvious and major legal flaw in violation of universal service legal requirements is encompassed within the ABC Plan's proposed alternative "Advanced Mobility/Satellite Fund." The AMF is proposed as an alternative funding concept for the most rural, highest-cost areas where broadband telecommunications services are inadequate. Instead of bringing all U.S. residents up to an adequate universal service level as required by both the 1934 Act and the 1996 Act,¹⁰ the ABC Plan proposes that these costly-to-serve hot spots suffer with inadequate service,¹¹ wholly abandoning the traditional goal of adequate services for all residents.

The ABC proposal is admittedly weak on details for the alternative AMF support concept for the highest of the high-cost rural areas. This admission of missing details speaks to the abandonment of universal service statutory priorities by the price cap companies. The ABC Plan envisions, without supporting details, that satellite service be used as the only broadband technology available in the areas that need such service the most. TSTCI cannot support a plan that abandons universal service principles and that may be eventually forced on the rural carriers' service areas although outlined for the price-cap carriers only at this time.

While satellite technology clearly has its place in telecommunications, TSTCI contends that the majority of the telecommunications industry acknowledges that satellite technology today cannot support even quality voice service, much less the more stringent technical requirements for broadband service expected and demanded by customers and certainly does not

¹⁰ Id.

¹¹ Although not specifically stated, it appears the ABC Plan will allow the price cap carriers to abandon voice service in addition to broadband service to some customers given the plan further states the price-cap carriers can relinquish their carrier of last resort responsibilities. Allowing the large companies that have not invested in their service areas the ability to pick and choose which customers they desire to serve is not within the public interest. Leaving this decision to these carriers will not change their investment behavior and will likely create more customers that do not have the opportunity to have adequate voice or broadband service. In addition, with limited funding available to the rural carriers, it is unlikely the rural carriers will be able to close the gap as they have done over the past 40 years. The overall result is a form of "redlining" of rural areas.

meet the statutory requirement of comparable services as provided in urban areas. The proposed AMF funding proposal and the limited funding amount not only violate universal service legal requirements and are not within the public interest, it turns long-held universal service policies upside down.

IV. Originating Access Reform is Necessary and Should be Treated in the Same Manner as Terminating Rate Reform

TSTCI contends that the FCC must address originating access rates as part of comprehensive reform and provide for the recovery of originating access rate reductions in the same manner as terminating access rate reductions. As the Commission observed during the onset of the access charge rating structure in the mid-1980s, high originating access rates can be avoided by interexchange carriers through bypass of the PSTN. In June 1986, the Commission attempted to address the bypass issue by transitioning the originating Carrier Common Line rate to zero, while leaving the terminating Carrier Common Line rate at a significantly higher level. TSTCI believes that reducing terminating access rates while leaving originating access rates at higher levels will create incentives for interexchange carriers to bypass the PSTN to avoid originating switched access charges.

TSTCI does not support replacing originating access with a flat per-customer charge imposed on the incumbent LEC's long distance affiliate for each presubscribed customer, as described in the *Further Inquiry*.¹² Originating access charges are still billed to many non-affiliated interexchange carriers, not just the incumbent LEC's long distance affiliate. Furthermore, not all incumbent LECs have long distance affiliates. Additionally, this originating flat per-customer charge simply would not work for toll-free 8YY minutes.

¹² See *Further Inquiry*, at 15.

In many cases, toll-free 8YY minutes are as much as 50% of the incumbent LEC's originating access minutes. For toll-free 8YY minutes, the interexchange carrier is selected by the terminating end user, not the originating end user. Additionally, the retail long distance revenue is billed and received by the terminating interexchange carrier to the terminating end user. Without the ability to bill per-minute originating access charges for toll-free 8YY minutes, the originating incumbent LEC's facilities will be used without compensation by the terminating interexchange carrier.

TSTCI believes that originating per-minute access charges are still appropriate for the use of our networks by third parties and should be reduced consistent with terminating access charges. Furthermore, TSTCI believes the revenue reductions associated with originating access should be subject to similar provisions for revenue recovery as terminating rate reductions as proposed by the reform plans filed in this proceeding.

V. ICC Rates Required for Both Interstate and Intrastate Terminating VoIP Traffic to Avoid Arbitrage

TSTCI contends that VoIP traffic should be subject to existing intercarrier compensation rates for both interstate and intrastate terminating VoIP traffic, based on the originating and terminating numbers in the terminating access usage record. If the Commission determines that only interstate rates are applicable to all terminating VoIP traffic, the Commission will create a new arbitrage opportunity for providers. TSTCI believes that providers will be incented to declare all terminating traffic as VoIP traffic, thereby eliminating all intrastate terminating minutes.

Terminating VoIP traffic cannot be identified in the terminating access usage record provided by the tandem company to the terminating LEC. Consequently, a percentage of VoIP traffic factor would have to be provided by the terminating interexchange carrier to the

terminating LEC. As we have seen previously with Percent Interstate Usage (PIU) factors when interstate access rates are lower than intrastate access rates, the terminating interexchange carrier is incented to overstate its PIU factor. The same incentive would exist to overstate the terminating VoIP factor. If the Commission clarified that all VoIP traffic was subject to the same intercarrier compensation rates as non-VoIP traffic, this would eliminate the need for any type of VoIP factor.

As stated in previous comments, TSTCI maintains that all traffic terminating on the PSTN should pay the same terminating access charges, regardless of the technology used to originate or transport the call.¹³

VI. Cuts in USF Funding Will Exacerbate Precarious Financial Condition of Many RUS Borrowers

TSTCI would like to point out the excellent information provided by Rural Utilities Service (RUS) Administrator Jonathan Adelstein and staff to the commission on July 29, 2011.¹⁴ The RUS ex parte presentation¹⁵ on the telecommunications and broadband loan programs underscores the reliance of RUS borrowers on USF High Cost support and the precarious financial condition of a substantial number of RUS borrowers.

¹³ In footnote 10, the ABC Plan presumes that “commercial contracts” would be applicable to IP-IP Interconnection in an all IP world. TSTCI strongly disagrees with this presumption and maintains that the exchange of voice traffic over these interconnection facilities is using the PSTN and must continue to be subject to the appropriate compensation regime under section 251(g). It is clear from the ABC Plan and recent experience that the major carriers do not view IP-IP interconnection with the rural LECs as jointly provided access service (either switched or special) since they are currently refusing to provide Ethernet Transport Service on a jointly provided, meet point billing basis to end users in the rural LEC serving areas. TSTCI submits that the use of commercial contracts will further erode the provision of services to the rural areas and will increase the cost of doing business. Small, rural companies have little chance of defending their interests in good faith negotiations with the large carriers who have vastly greater market share and financial resources.

¹⁴ Notice of Ex Parte communications of the Rural Utilities Service regarding: *In the Matter of the Connect America Fund*, WC docket No. 10-90; *National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; Federal-State Joint Board on universal Service, CC Docket no. 96-45; and *Lifeline and Link-Up*, WC Docket No. 03-109; July 29, 2011.

¹⁵ Rural Utilities Service, *Overview of Telecommunications and Broadband Loan and Grant Programs*, July 28, 2011.

Specifically, the RUS analysis states that over 70 percent of borrowers receive more than 25 percent of their operating revenues from USF. In addition, a significant number of borrowers have times interest earned ratios (TIERs) less than 1.0 (the minimum required TIER on RUS loans) in each of the last three years. RUS concludes by showing that a 20 percent cut in USF funding would result in 32.5 percent of loans approved in 2010-2011 not being able to maintain loan feasibility with a TIER of 1.0. Moreover, even with the current USF funding level capped at the aggregate 2009 level received by the 46 borrowers (\$107 million) who received loans in 2010-2011, these 46 RUS loans are not expected to be financially feasible without a sizable amount of additional USF funds.

TSTCI made these same points in comments on the Connect American Fund in April 2011.¹⁶ TSTCI found that High Cost Loop support amounts to approximately 20 percent of TSTCI member company operating revenues.¹⁷ Approximately 28 percent of the 36 member companies responding to TSTCI's data request reported a TIER less than 1.0 based on 2009 results.¹⁸ TSTCI's comments stated that the current financial condition of many TSTCI member companies is precarious at current USF funding levels.¹⁹ After evaluating the cuts to USF support proposed in the Connect America Fund Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking on member companies' financial conditions, TSTCI's comments said that many more companies can be expected to fall below the 1.0 TIER.²⁰ The recent RUS ex parte analysis confirms the points made in TSTCI's comments.

The RUS analysis reinforces the fact that changes to the universal service support mechanisms and intercarrier compensation can have a serious detrimental effect on the financial

¹⁶Comments filed by Texas Statewide Telephone Cooperative, Inc., *In the Matter of the Connect America Fund*, WC Docket No. 10-90, etc., April 18, 2011.

¹⁷ Id., p. 2.

¹⁸ Id., p. 5.

¹⁹ Id., pp. 4-5.

²⁰ Id., p. 10.

viability of the rural ILECs, the service they provide to customers, and the communities they serve.

VII. Conclusion

TSTCI appreciates the opportunity to submit these comments and urges the Commission to strongly consider the issues presented herein when making a final determination regarding comprehensive universal service and ICC reform.

TSTCI urges the Commission to reject the provisions of the ABC Plan regarding FCC preemption of state authority over intrastate access rates and services, the proposed inadequate broadband standard, and alternative Advanced Mobility/Satellite Fund. The necessary legal standards for preemption regarding intrastate services and access are not met as presumed in the ABC Plan. The proposed preemption is not legal and will cause unnecessary harm. This is particularly true in states with their own universal service mechanisms where sudden changes in rates, access, or service obligations could have an immediate negative impact on those state mechanisms, threaten the viability of many small and rural carriers, and put the telecommunications infrastructure in jeopardy.

The proposed broadband standard of 4 Mbps downstream and 768 kbps upstream for rural areas is wholly inadequate and would not bring to the rural areas a reasonably comparable level of service as would be provided to urban areas. The proposed AMF which envisions the use of satellite technology in areas that have no alternatives also provides inadequate support and service. These proposals violate the universal service statutory requirements that high-cost rural areas receive telecommunications service that is comparable in quality and price to similar services available in urban areas.

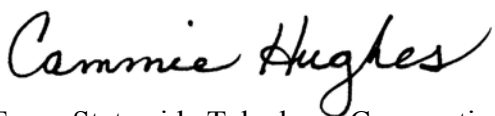
In regard to ICC reform, the Commission must address the reduction of originating access rates consistent with terminating access charges to avoid creating an incentive for

interexchange carriers to bypass the PSTN in order to avoid originating switched access charges. Originating per-minute access charges are still appropriate for interstate and intrastate toll calls, as opposed to a flat per-customer charge on the incumbent ILEC's long distance affiliate for each presubscribed customer. There must also be similar provisions for originating access revenue reduction recovery as there are for terminating access charge reductions.

VoIP traffic should be subject to existing ICC rates for both interstate and intrastate terminating VoIP traffic, based on the originating and terminating numbers in the terminating access usage record. This will avoid incenting interexchange carriers to declare all terminating traffic as VoIP traffic in order to eliminate all intrastate terminating minutes. All toll traffic terminating on the PSTN should pay the same terminating access charges, regardless of the technology used to originate or transport the call.

Finally, the RUS ex parte analysis underscores the reliance of RUS borrowers on USF high-cost support and the precarious financial condition of many RUS borrowers. The RUS analysis confirms the findings in TSTCI's previous comments in this proceeding. The Commission's final decisions regarding universal service and ICC reform will significantly impact rural carriers and their ability to continue to invest in the high-cost rural areas of the nation.

Respectfully submitted,

A handwritten signature in black ink that reads "Cammie Hughes". The signature is written in a cursive, flowing style.

Texas Statewide Telephone Cooperative, Inc.

By: Cammie Hughes
Authorized Representative

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazoria Telephone Company
Brazos Telecommunications, Inc.
Brazos Telephone Cooperative, Inc.
Cameron Telephone Company
Cap Rock Telephone Cooperative, Inc.
Central Texas Telephone Cooperative, Inc.
Coleman County Telephone Cooperative, Inc.
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